

EXHIBIT "A"
STATE OF MONTANA
BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

IN THE MATTER OF APPLICATION
FOR BENEFICIAL WATER USE PERMIT
NO. 2079-g40A, BY
ARTHUR G. MATTER

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER

The Proposed Findings of Fact, Conclusions of Law, and Order in this matter, entered on March 12, 1975, by the Hearing Examiner, are hereby modified and adopted as the Final Findings of Fact, Conclusions of Law, and the Final Order.

ORDER

The Applicant's Provisional Permit is granted, subject to:

1. All prior existing water rights in the source of supply.
2. Installation of a flowmeter which will accurately measure the actual quantity of water pumped from the well.
3. All monitoring and measuring of the well in question will be coordinated with and a part of the study of the Big Flat area, which is being undertaken by the Department.
4. Both the Applicant and the Objectors will observe the water levels in their wells and keep an accurate record of the water levels during the peak irrigation season. Each record shall include water level, method of measurement, date and time of measurement, precipitation to date, quantity of water pumped from the well, lengths of periods of pumping, and year, month, and day measured. The Applicant and Objectors shall submit copies of the above records to the Department at the end of each irrigation season or upon

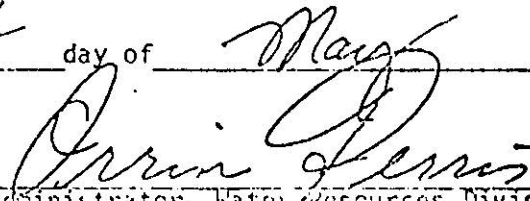
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request of the Department, with adequate notice given. The records will be used to evaluate possible adverse effects to prior water rights and as data to be utilized in the Big Flat groundwater study.

The Department recommends that the water levels in the wells be measured by the method of chalking a steel measuring tape, and that measurements be made at a time when the well has not been pumped for at least one hour prior to the measurement.

5. If it be determined that the Applicant's well does interfere with those prior existing water rights, this permit will be modified so as not to interfere with those rights.

Done this 19th day of May, 1975



Administrator, Water Resources Division
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

NOTICE: Section 89-8-100, R.C.M. 1947, provides that a person who is aggrieved by a final decision of the Department is entitled to a hearing before the Board of Natural Resources and Conservation. A person desiring a hearing before the Board pursuant to this section must notify the Department in writing within ten (10) days of the final decision.

Address: Department of Natural Resources and Conservation
Natural Resources Building
32 South Spring
Helena, MT 59601

CASE # 2079

BEFORE THE DEPARTMENT
OF
NATURAL RESOURCES AND CONSERVATION

IN THE MATTER OF THE APPLICATION)
FOR BENEFICIAL WATER USE PERMIT)
NO. 2079-g40A, ARTHUR G. MATTER)

PROPOSAL FOR DECISION

Pursuant to the Montana Water Use and Administrative Procedure Acts, after due notice a hearing was held on November 13, 1974 at Chinook, Montana for the purpose of hearing Objections to the above-named Application.

The Applicant, Arthur G. Matter, appeared at the hearing and presented testimony. He was not represented by counsel.

Mr. Oliver Killam, Mr. Clarence Harman, Minerva W. Nace, Mr. Pat Kimmel, Mr. Herman Liese and Mr. Wallace A. Beck, all filed timely Objections to the Application. All were represented by counsel, Mr. Stuart MacKenzie, Esq., of Chinook, Montana. Mr. Killam, Mr. Kimmel and Mr. Beck were present at the hearing and presented testimony. Mr. Carl Humphreys was called as a witness for the Objectors and presented testimony. Mr. MacKenzie offered into evidence a Montana Bureau of Mines and Geology report on the Geology and Groundwater Resources of Northern Blaine County. (E.A. Zimmerman, 1960, Preliminary Report on the Geology and Ground-Water Resources of Northern Blaine County, Montana; Montana Bureau of Mines and Geology Bulletin 19), (hereinafter called Zimmerman Report). This report was received into evidence without objection. Mr. MacKenzie was asked to file a brief summarizing his argument in support of the Objectors. The brief has been received and is now part of the file.

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PROPOSED FINDINGS OF FACT

1. On April 22, 1974, the Applicant submitted an Application for Beneficial Water Use Permit to the Department seeking to appropriate 600 gpm, and not to exceed 500 acre feet per year. The water is to be appropriated by means of a well, pump and sprinkler. The well is to be located at a point in the NW $\frac{1}{4}$ Section 33, T. 36 N., R. 24 E., Blaine County, Montana, and is to be used on 160 acres of hayland in the NW $\frac{1}{4}$ of Section 33, and 80 acres of hayland in the S $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Section 28 from May 1 to September 1, inclusive of each year.

2. On October 2, 1974, Stuart MacKenzie filed timely Objections to the Application on behalf of his clients, the above-named six Objectors. Objector Pat Kimmel testified that he has domestic wells and stockwater pits and alfalfa which he thinks is subirrigated. Mr. Oliver Killam testified that he has pits and springs for stockwater. Mr. Wallace Beck testified that he has pits for stockwater. These objections are filed on the grounds that the Applicant's proposed wells will have an adverse affect on the prior water rights of the Objectors. The Objections request consideration of the feasibility of creating a controlled groundwater area, which however, can only be established by complying with Sections 89-2911, et seq.

3. The Applicant testified that he doesn't think his well will hurt the water table. He said he lives between two irrigation wells right now. He said he has a hand dug well at home. He continued that in the two years the irrigation wells have been pumping, the water level in his hand dug well hasn't lowered an inch. One irrigation well belongs to Mr. Harlan Krass and is located less than a mile to the Southwest. The other irrigation well belongs to Mr. Walter Hinebauch and is located 2 $\frac{1}{2}$ miles straight east of Mr. Windels hand dug well. Mr. Windels continued that when both of these wells were pumping full time day and night, this last summer (1974) it didn't lower his hand dug well a bit.

4. Mr. MacKenzie quoted from the Zimmerman Report, Page 1 that, "The only source of recharge to the aquifer is the precipitation falling in the plateau which it underlies. It is estimated that 5,000 acre feet of recharge is available for use from the Flaxville formation. Approximately 300,000 acre feet of groundwater is in storage and depletion of the aquifer is not imminent under present patterns of water use."

Mr. MacKenzie said that the objectors, all ranchers and farmers in the area have pits, domestic wells, stockwater wells and springs which they fear could be adversely affected by the Applicant's proposed wells. The total amount requested by the Applications heard in the two day series, November 13 and 14, 1974 of hearings totaled 2,190 acre feet per year.

Mr. MacKenzie said that he researched the filings on record made from December of 1970 to July of 1973. Filings were made on thirteen irrigation wells for a total of 3,320 acre feet per year. He understands that all of these wells are not now being used for irrigation. Mr. MacKenzie said that also there are six wells that were filed on from 1957 to 1959. Only two of these are now in use. Mr. MacKenzie continued that if all of these wells were pumped to capacity, the quantity of annual appropriations would exceed the 5,000 acre feet of estimated annual recharge to the aquifer and at some point shortly, the aquifer is going to be lowered. Mr. MacKenzie said there are many wells on the Big Flat used for stockwater and domestic purposes which have never been filed upon.

Mr. MacKenzie stated that unless it can be shown that the prior appropriators abandoned these wells, that they still have a right to pump these wells, and that they would still have a priority over the Applicant to pump these wells.

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Mr. MacKenzie said that with a filing made on public record there is a presumption that the wells are in use. He further argued that to show abandonment, one must show intent, and it is very difficult to show intent.

No evidence was presented as to the quantity actually put to beneficial use by any of these wells filed upon.

5. Mr. Peter Norbeck, Hydrogeologist for the Department testified that the Big Flat is an isolated aquifer and is not fed by underground water from Canada. The only recharge is from precipitation falling on the plateau. The Zimmerman Report estimate of 5,000 acre foot annual recharge is the best estimate available. If the rate of withdrawal comes to exceed the rate of recharge, the level of water in the aquifer will be lowered. This will first affect the wells closest to the Applicant's irrigation wells. Further study would be desirable to determine what is a hydrologic situation and what is the quantity of annual recharge available.

6. Mr. Pat Kimmel testified that he has domestic wells and stockwater pits and alfalfa which he believes is subirrigated. Mr. Kimmel testified that during the summer of 1974, the water level in his stockwater pit dropped three feet during the period when all the irrigation wells were pumping on the Big Flat, but that the water level in his pit came back up about two feet when the pumping stopped. The irrigation wells closest to Mr. Kimmel's dugouts are Walter Hinebauch's, which are five miles distant. Mr. Peter Norbeck, Hydrogeologist for the Department, testified that because the groundwater flow rates are slow, it is extremely unlikely that those wells can have such an immediate effect on groundwater pits five miles away. The Zimmerman Report stated that under a gradient of 10 feet per mile ground water flow rates may range from less than one foot per year in clay to about four feet per year in clean coarse gravel.

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7. Mr. Carl Humphreys testified that in 1957, Art Egbert had drilled an irrigation well. Mr. Egbert quit using the well, because it was thought that pumping from this well had lowered his house well. Art Egbert was not present at the hearing.

8. Mr. Oliver Killam testified that lowering the water table would cause him severe economic hardship by lowering his stockwater pits, thereby depriving his stock of water. Mr. Wallace Beck testified that lowering the water table would cause him severe economic hardship by lowering his stockwater pits and drying up his springs and thereby depriving his stock of water.

9. The Applicant testified that only 6 of the 13 wells filed on since 1970 are in use. He listed these 6 to be 3 in use by Harlan Krass, one in use by James Billmayer filed in the name of John Billaayer and 2 filed by Walt Hinebauch, only one of which is in use.

10. Counsel, Mr. MacKenzie, said he thought the Jim Billmayer well had been filed on before 1970, perhaps in 1957.

11. Page 14 of the Zimmerman Report states:

"With the 5,000 acre-feet of recharge each year it should be possible to apply light irrigation for at least 7,000 acres of land. Part of the water pumped from the irrigation wells may be expected to percolate back into the ground-water reservoir. With the 300,000 acre-feet of water storage in the gravel aquifer it would be possible to pump somewhat more water than the average annual recharge for a long period before serious depletion of the aquifer would take place."

PROPOSED CONCLUSIONS OF LAW

1. The evidence presented did not conclusively establish that granting the Applications would adversely affect prior existing water rights.

2. A filed appropriation is a valid water right only to the extent and limit of the quantity of water actually put to beneficial use and not for the entire quantity filed upon.

PROPOSED ORDER

The Applicant's Provisional Permit be granted subject to:

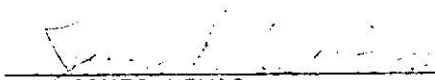
1. All prior existing water rights.
2. Installation of a flow meter which will accurately measure the actual quantity of water pumped from the well.

Both the Applicant and the Objectors will observe the water level in their wells and will keep an accurate record of the water levels during the peak irrigation season. Each record should include; water level, method of measurement, date and time of measurement, precipitation to date, quantity of water pumped from the well, lengths of periods of pumping, and year, month and day measured.

The Department recommends that the water level in the wells be measured by the method of chalking a steel measuring tape, and that measurements be made at a time when the well had not been pumped for at least one hour prior to the measurement. If it be determined that the Applicant's well does interfere with those prior existing water rights, that this permit be modified so as to not interfere with those rights.

NOTICE: This is a Proposed Order and will become final when accepted by the Administrator, Water Resources Division, Department of Natural Resources and Conservation. Pursuant to Section 82-4212, R.C.M. 1947, and Rule MAC 1-1.6 (2)-F5190, written exceptions to this Proposed Order may be filed with the Administrator within ten (10) days of service of this Proposed Order upon the parties herein. Upon receipt of any written exceptions, opportunity will be afforded to file briefs and make oral arguments before the Administrator.

DATED this 12th day of March, 1975.



JAMES LEWIS

Hearing Examiner

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